

September 12, 2005

S. WILLIAM BECKER  
EXECUTIVE DIRECTOR

U.S. Environmental Protection Agency  
Air and Radiation Docket and Information Center  
1200 Pennsylvania Avenue, NW  
Room B108  
Washington, DC 20460

Re: Docket ID No OAR-2004-0094

Dear Sir or Madam:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), the two national associations of air pollution control agencies in 53 states and territories and more than 165 metropolitan areas across the country, thank you for the opportunity to comment on the reconsideration of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the General Provisions regarding the Startup, Shutdown and Malfunction (SSM) provisions. (70 *Federal Register* 43991, published July 29, 2005).

STAPPA and ALAPCO oppose this reconsideration. EPA states that the notice of reconsideration is intended "to clarify...that the applicable requirement is the general duty to minimize emissions and not the specifics in the SSM plan itself," and proposes "to retract the requirement to implement the plan during periods of SSM" (70 *Federal Register* 43994). In our opinion, this proposal does not clarify, but rather adopts the problematic position that 40 CFR Part 63 requires source owners and operators to develop plans that they need not even implement in the event of malfunctions. This reconsideration should not be finalized.

The specific provisions that must be implemented under an SSM plan cannot logically be divorced from the requirement of the plan *per se*. If the applicable requirement is the general duty to minimize emissions, that duty must be carried out in accord with the provisions of 40 CFR Part 63, which requires a written SSM plan that describes procedures for operating and maintaining the source during periods of SSM, and a program of corrective action for malfunctioning process, air pollution control, and monitoring equipment used to comply with the relevant standards.

Compliance with the general duty provision cannot be attained without successful implementation of these specific component requirements. Thus, the applicable requirement is the general duty to minimize emissions, and the general duty includes and cannot be separated from the specific provision to have—and to implement—an SSM plan. The plans in their entirety are requirements with which sources must comply. Eliminating the integral implementation component of the plans irreparably undermines compliance by the source with the general duty provisions and evaluation of such compliance by state and local inspectors.

In fact, the SSM plan provides a benchmark to evaluate compliance with the general duty provision, which requires all subject sources to maintain and operate their equipment in a manner consistent with good practices for minimizing emissions (40 CFR 63.6(e)(1)(i)). If a source implements an SSM plan, compliance inspectors can presume that it is meeting the general duty requirement. Furthermore, the SSM plan facilitates the evaluation of the general duty requirement by clarifying and identifying the maintenance and operation practices during startup, shutdown and malfunction events that are consistent with good practices for minimizing emissions. Without an SSM plan that must be executed, the general duty requirement would be vague, subjective, and unenforceable.

Many sources have not only developed and followed SSM plans, but have also been diligent in evaluating and revising them. Ideally, the federal regulations would be revised to require periodic revisions of plans, which currently are not required. Nonetheless, state and local agencies have often been successful in working with sources to revise plans as needed on a voluntary basis. It is unlikely, however, that sources will agree to update plans that they are no longer required to follow. If EPA promulgates these amendments, it will, in effect, impair a system that has been working reasonably well.

STAPPA and ALAPCO also have serious questions about the effect of EPA's current action in light of the significant public health concerns raised by SSM episodes. In fact, EPA itself has expressed concern about emissions from SSM events, noting that they:

- release toxic and carcinogenic chemicals;
- are open and notorious;
- are usually “off-the-books,” and thus hidden for compliance and emissions inventory purposes;
- could exceed the total annual emissions for a facility; and
- are largely avoidable.

SSM emissions are, according to EPA, grossly under-reported, and data about malfunction events are not easily accessible to the public. It has also been noted by EPA that the magnitude of refinery excess emissions are often two to three times the routine emissions reported, and that, in one instance, a carbon black plant

had “upset” VOC emissions 85 times the emissions that were reported for the emissions inventory.

EPA should not now reverse itself on this issue. In light of the existing inadequacies in regulatory control of emissions from malfunctions, EPA should not eviscerate one of the few regulatory mechanisms available for minimizing them and preventing their recurrence. STAPPA and ALAPCO have, in various forums, been encouraging states to take actions to understand the scope of SSM emissions and adopt measures to control them. Ongoing regulatory efforts relating to this important public health issue will be seriously undermined if these amendments are adopted.

The associations believe that EPA should also recognize that malfunctions at refineries, chemical plants and other industrial sectors can be emergency situations that pose genuine and immediate threats to communities. To paraphrase the words of one of our member agencies, “our communities should not have to wonder if the industrial source nearby is prepared to handle and abate emissions in the event of an emergency.” If this reconsideration is finalized, communities may indeed have cause to wonder if steps will be taken to promptly minimize emissions in the event of a fire, explosion, or other toxic release.

Finally, STAPPA and ALAPCO believe that SSM plans should be available to the public if the permitting authority has requested them from sources. Permitting authorities should not be required to obtain this information through a request made under section 114 of the Clean Air Act. Moreover, state and local agencies, as well as sources, have well-developed procedures for handling confidential business information. We strongly encourage EPA to revisit the conclusion that there should be, in effect, little—or sharply curtailed—public access to SSM plans.

We appreciate the opportunity to provide these comments to you. If you have any questions about these comments or desire further information, please do not hesitate to contact one of us or Mary Stewart Douglas of STAPPA and ALAPCO.



Bob Hodanbosi  
STAPPA Permitting Chair



Ursula Kramer  
ALAPCO Permitting Chair